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Main Principles

Towards

A Credit Union Act

Alberta

TREASURY

February 15, 1988

PROPOSED CREDIT UNION ACT

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PROPOSED CREDIT UNION ACT

DIRECTOR'S QUALIFICATIONS

Principles

Modern business law requires that directors and officers be qualified to perform their functions.

Legislative Provisions

- A person is not qualified to be a director of a credit union:

  a) unless he is an adult, a member and a Canadian citizen,

  b) if he is an undischarged bankrupt,

  c) if he is an employee of Central, or any credit union, or was in the immediate 3 year period preceeding his appointment/election,

  d) if he is a director, employee or officer of the Corporation or another credit union,

  e) if he is a professional advisor to the credit union,

  f) if he has been convicted of an offence related to his qualifications, functions or duties as a director, in the immediately preceeding five years.

  g) if he has a loan from any credit union, in arrears for a period of 60 days.

  h) if he is of unsound mind and has been so found by a court in Canada or elsewhere

  i) if he is disqualified by, or unless he satisfies other provisions of the by-laws. (Sec.58)

- Similar qualifications exist for the directors of Central with one important difference; if he is an employee of a credit union, he is disqualified from acting as a director of Central. (Sec.123(2)(d))

PROPOSED CREDIT UNION ACT

NEW INCORPORATIONS

Principles

A new procedure for the incorporation of credit unions is set out. A credit union is permitted to incorporate by meeting certain conditions, but is not permitted to commence business until it has the minimum number of members required by the legislation and the minimum subscribed capital. This approach allows a credit union adequate time to raise the necessary minimum capital and members to carry on the business of a credit union.

Legislative Provisions

- Credit unions may be incorporated by at least 20 individuals, who must deliver to the Minister amongst other things, articles, by-laws, a notice of the first directors and a proposed business plan.
  (Sec.19, 20)

- The Credit Union Deposit Guarantee Corporation (the "Corporation") will review the proposed business plan and make a decision whether it is acceptable as set out. (Sec.21)

- In order to commence business, a credit union must have at least 50 members in the case of a credit union with a bond of association and at least 250 members in the case of a credit union without a bond of association. (Sec.24)

- The amounts to be subscribed will be set out in regulation. It is contemplated the amounts for a credit union without a bond of association will be $250,000 in shares and $750,000 in deposits. In the case of a bond credit union the amounts will be $10,000 and $30,000 respectively. (Sec.24)

- The funds subscribed prior to the commencement of business will be held by Central. The amount to be spent on incorporation and organization expenses must have the prior approval of the Corporation. The directors will be held liable for any expenditures in excess of amounts not so approved. (Sec.24(5))

- A credit union incorporated with a bond of association may not change to a "no bond" credit union without meeting certain conditions set out in legislation. (Sec.26(3))

PROPOSED CREDIT UNION ACT

REMUNERATION OF DIRECTORS

Principles

Under the new legislation, directors may be remunerated. Directors play a key role in ensuring the financial health of credit unions. The new Act places an increased onus on the responsibility of directors in their relationship with a credit union and consequently it is appropriate that directors have the opportunity to receive adequate remuneration.

Legislative Provisions

- The membership shall, by by-law fix the maximum aggregate of remuneration of directors of the credit union, and of its subsidiaries.

- Thereafter, the board shall pass a resolution fixing the actual remuneration to be paid during the current fiscal year to each of the directors.

- At the annual general meeting, the board shall disclose the aggregate amount of remuneration paid to directors.

- A credit union or its subsidiaries shall not provide any perquisite, benefit or advantage to any director of the credit union or to a director of another credit union, that is not enjoyed by the members of the credit union. (Sec.64)

PROPOSED CREDIT UNION ACT

DUTY OF CARE OF DIRECTORS AND OFFICERS

Principles

Modern business corporation law requires that directors and officers meet certain standards of duty and care.

Legislative Provisions

- A director or officer is required to act honestly, in good faith and with a view to the best interests of the credit union as a whole.

- He must exercise care, diligence and skill that would be expected of a reasonably prudent person in comparable circumstances, and he must comply with the articles and by-laws.

- In considering whether a particular transaction or action is in the best interests of the credit union, a director or officer shall also have due regard to the interests of all depositors. (Sec. 66)

- Similar provisions apply to directors or officers of Central and the Corporation.

PROPOSED CREDIT UNION ACT

MISUSE OF CONFIDENTIAL INFORMATION

Principles

The intent of these provisions is to impose a clear standard of care on "insiders" of a credit union, the Corporation or Central with respect to confidential information obtained in the course of business.

Under the provisions, no insider is to enter a transaction on the basis of confidential information in order to secure a benefit or advantage for himself or other persons.

Legislative Provisions

- The relevant provisions apply to directors, officers and "related parties".

- "Related parties" of a body corporate include:

  - directors and officers;

  - spouses or children of directors and officers;

  - relatives of directors and officers or of spouses of directors and officers who share the same home as the directors or officers;

  - a professional advisor of the body corporate;

  - a corporation in which persons described above own more than 50% of the voting shares;

  - a corporation in which a director or officer owns more than 10% of the voting shares;

  - partners of persons described above;

  - trustees acting on behalf of persons described above;

  - subsidiaries, other than those which are wholly-owned and whose obligations are fully and unconditionally guaranteed;

  - affiliates (i.e. corporations in which the body corporate holds 10% or more of the voting shares);

Misuse of Confidential Information
Legislative Provisions (continued)

- Directors, officers and "related parties" of a credit union, the Corporation or Central are prevented from using information on loans, investments or other information pertaining to the business of customers, members or the institution to benefit directors, officers or any other person.

PROPOSED CREDIT UNION ACT

DISCLOSURE BY DIRECTORS AND OFFICERS

Principles

The intent of these provisions is to require directors and officers to disclose any material interest they may have in a contract with the credit union, Corporation or Central. The scope of the provisions includes prospective contracts and any indirect material interest a director or officer may have, such as through a spouse or a partner. Where such a contract is approved by the board and is reasonable and fair from the credit union's perspective, the contract is not voidable. The disclosure provisions are designed to work in conjunction with the conflict of interest provisions, which are described in the part dealing with "Conflict of Interest and Self Dealing".

Legislative Provisions

- Disclosure is required with respect to contracts which are between the credit union or Central and:
  - directors or officers of the credit union or Central;
  - corporations in which directors or officers have a material interest;
  - corporations of which directors or officers of Central are also directors or officers (i.e. cross-directorship);
  - other "associates" of the director or officer, who are at non-arm's length to the director or officer;
- "Associates" are defined to include:
  - spouses and children of directors and officers;
  - spouses of children of directors or officers, and relatives who share the same home as directors and officers;
  - corporations controlled by an associate or associates;
  - partners of directors and officers;

Disclosure By Director and Officers
Legislative Provisions (continued)

- Directors or officers who do have a direct or indirect material interest in such a contract must disclose in writing to the credit union a description of their interest in the contract, including the interest of parties at non-arm's length to the director or officer. These disclosures must be entered in the minutes of a board meeting.

- After a disclosure of this nature a director or officer must abstain from any vote or discussion on the contract's approval and must not be present during such a vote or discussion.

- Where these disclosure provisions are contravened, a court may set the contract aside on application of a creditor, customer, member or of the institution itself, on any terms it thinks fit.

- Where a director or officer has made disclosure, contracts which are approved and are reasonable and fair may not be set aside only by virtue of the fact that the director or officer has a direct or indirect interest; or that the director or officer was counted for the purposes of quorum. Where a contract meets those requirements, the director or officer is not liable to the credit union for any direct or indirect gain from the contract.

PROPOSED CREDIT UNION ACT

CONFLICTS OF INTEREST AND SELF-DEALING:

Principles

The intent of these provisions is to ensure that credit unions and Central do not engage in transactions with "related parties" of the credit union or Central which are more preferential than transactions undertaken in the normal course of business or which are contrary to the best interests of credit union members. ("Related parties" are defined in "Misuse of Confidential Information" section). The provisions generally prohibit all transactions with "related parties" and stipulate a number of exceptions to the general prohibition.

Legislative Provisions

- Credit unions and Central are prohibited from acquiring or disposing of assets from or to "related parties", or entering into any other transaction with "related parties".

- Non-employees (e.g. directors)of a credit union will be permitted to obtain loans from the credit union without board approval. The loans must be on a non-preferential basis. Loans to employees may be granted on a preferential basis with board approval. (see Section on Loans).

- Exceptions which do not require approval of the board of directors include transactions of nominal value, which will be prescribed, employment contracts with persons who are not directors or officers and services which are normally provided to credit union members such as deposits and other personal financial services.

- Exceptions which require approval of the board of directors include contracts for the provision of management services, the leasing of real estate, the provision of pension and benefit plans; loans on market terms and conditions up to a prescribed maximum; transactions of government or government guaranteed securities; and prescribed transactions.

- In addition to most of the exceptions noted above, credit unions and Central may engage in certain transactions with financial institutions which are related parties. These include: deposits made in the body corporate for liquidity or clearing purposes; loans which are government guaranteed or fully secured by prescribed securities; transactions of prescribed securities; and transactions of assets for restructuring of the body corporate, with regulatory approval.

Conflicts of Interest and Self-Dealing Legislative Provisions (continued)

- Generally, transactions which are exempted above must be made on market terms and conditions and the onus is on the parties to the transaction to demonstrate that they are on market terms and conditions.

- Transactions which contravene the conflict of interest and self-dealing provisions, may be set aside by the courts upon application.

- Subsidiaries which are wholly-owned by the body corporate and whose obligations are fully and unconditionally guaranteed by the parent are exempt from the general prohibition, since they are not "related parties".

- The Guarantee Corporation may exempt a transaction (e.g. sale of land to a related party) of a credit union from the general prohibition, where that transaction is, in the opinion of the Corporation, necessary for the credit union's well being. A transaction by Central may be similarly exempted by the Minister.

- The Minister may investigate transactions between a credit union and its related parties, and reverse a particular transaction where it is in the opinion of the Minister, contrary to considerations of public interest. The Minister has a similar power with respect to Central's transactions. This action is subject to review by the courts.

- Auditors are required to disclose any contravention of the conflict of interest and self-dealing provisions of which they become aware to the board of directors and to the Minister where the board fails to rectify the contravention. Professional advisors are similarly required to report breaches of which they become aware to the auditor and the board of directors.

- Credit unions, the Corporation or Central may indemnify their directors or officers where they are acting in their official capacities.

- Remuneration of directors and officers must be done in accordance with the legislative provisions described in "Remuneration of Directors and Officers".

- The Minister is empowered to make regulations governing transactions between credit unions or Central and their "related parties".

PROPOSED CREDIT UNION ACT

COMMITTEES

Principles

Credit Unions will be required to establish formal committees to monitor the activities of credit unions in certain key areas. The committees defined in the legislation are the audit committee, the finance committee and the credit committee.

Legislative Provisions

- Large credit unions (i.e. assets greater than $2.0 million), shall appoint an audit committee, a finance committee or an audit and finance committee and one or more credit committees (Sec. 73(1)).

- A small credit union does not have to establish formal audit and finance committees. Where a small credit union does not establish these committees, the board must carry out the functions.

- Each committee must include at least 3 directors except the credit committee which must include 3 members. (Sec. 73(2),(3))

Finance Committee

- The functions of the finance committee include:

  a) recommending to the board the annual budget for the year,

  b) considering the credit union's performance for each quarter with respect to its budget,

  c) making recommendations to the board on the loan mix of the credit union,

  d) recommending financial policies relating to the credit union's investments and lending; and,

  e) recommending to the board procedures for ensuring compliance with the conflict of interest and self-dealing provisions.

  f) performing such other duties as are prescribed or assigned to it by the board. (Sec. 74)

PROPOSED CREDIT UNION ACT

Audit Committee

- A credit union's audit committee shall perform the following functions:

  a) review the annual audited financial statements and make appropriate recommendations to the board, before their approval,

  b) review and make recommendations to the board on the appointment and remuneration of the auditor and methods of conducting audits by the internal auditor,

  c) review reports and make recommendations to the board with respect to reports by the internal and external auditors,

  d) review all financial statements sent to the minister,

  e) recommend to the board, internal control procedures to safeguard the assets of the credit union,

  f) review the scope of the audit with the auditor,

  g) report to the board on significant changes in accounting principles. (Sec. 80)

Credit Committee

- The credit committee shall ensure that the credit policies established by the board are adhered to before any money is advanced.

  (Note: This does not require the committee to approve each loan. The credit committee must make reasonable efforts to ensure that loan officers are aware of the credit union's loan policies)

General

- The above mentioned committees are required to meet at least once in each quarter and credit commmittees meet as required. (Sec.73(6)

- The annual reports by each committee, submitted to the annual general meeting, shall be forwarded to the Minister and the Corporation. (Sec.78(1))

PROPOSED CREDIT UNION ACT

ACCOUNTING/AUDITING STANDARDS/AUDITORS

Principles

The legislation will deal with business practices, as it relates to the accounting and auditing standards, which will be applied. It will institute a regime that will facilitate communication between the Minister, the auditor and the credit union.

Legislative Provisions

Standards

- Financial statements will be prepared in accordance with generally accepted accounting principles, and the auditor shall apply generally accepted auditing standards in respect of his examination. (Sec. 5(1))

- The Minister may prescribe alternative or additional accounting principles or auditing standards. For the most part, these will appear in regulation, and an example is the requirement that interest will not accrue on non-performing loans beyond 90 days and in certain circumstances, the accrual may be less than 90 days. The regulations will contain extensive rules on income recognition, provisions for losses, etc. (Sec. 5(2))

Auditors

- A person is not qualified to act as auditor if he is prohibited by law from conducting audits and unless he is independent of the credit union.

- Independence of the auditors is defined by regulation. (Sec.81)

- The auditor will be appointed by the membership at the annual general meeting. (Sec.82)

- The auditors will have the right to attend all general and audit committee meetings and be heard at them on matters relating to his duties. The auditor may call a meeting of the audit committee. (Sec.84)

Accounting/Auditing Standards/Auditors
Auditors (continued)

- The auditor may make a written demand on the board or any present or former director/officer/employee or former auditor of the credit union, to furnish information and permit access to records, documents, etc., which in the opinion of the auditor, are necessary to enable him to make his examination. The auditor may request the board to obtain the information that he requires to carry out the audit. (Sec.86)

- The auditor will be required to prepare a Management Letter, with respect to his observations of the adequacy of measures of internal control, corrective measures undertaken by the credit union, response to comments raised or deficiencies reported by him and whether during the course of his audit, he noted any instances where the credit union contravened the Act or regulations. (Sec.87)

PROPOSED CREDIT UNION ACT

FINANCIAL DISCLOSURE

Principles

Credit unions will be required to make known the financial condition of the institution, to the membership, the Minister and the Corporation, and in addition, provide information in a number of key areas from specified sources.

Legislative Provisions

- At each annual general meeting, the following must be disclosed:

  a) the audited financial statements, including the auditor's report except, in the case of a small credit union, where an audit is not required, the unaudited financial statements,

  b) the aggregate amount paid to all directors as reimbursement or allowance for expenses incurred,

  c) the aggregate amount of loans in arrears to directors,

  d) the amount of loans and guarantees outstanding or in favour of each subsidiary, (Sec. 76)

  e) the aggregate amount paid to directors and non-employee officers, (Sec.64(6))

- The credit union must provide, on the request of a member, a copy of the most recent financial statements for the last fiscal year. (Sec.77(2))

- Before each annual general meeting, the credit union shall provide the Minister and Corporation with,

  a) a copy of the documents referred to in (a) to (f) above,

  b) a copy of the Management Letter (large credit unions only), (Sec.78(2))

- A copy of the finance and audit committee reports must be sent to the Minister and Corporation after each annual general meeting. (Sec.78(5))

PROPOSED CREDIT UNION ACT

PRUDENT INVESTMENT STANDARDS

Principles

The intent of these provisions is to require credit unions and Central to develop a clear set of investment standards and to ensure that their investments are made prudently. The prudent investment standards would apply in addition to statutory limits and prohibitions. Some quantitative limits and conditions will be specified in the regulations. The standards, in effect, impose a duty of care on officers or employees making investment decisions on behalf of the credit union's or Central's investment portfolios.

Legislative Provisions

- Prudent investment standards are defined as those which a reasonable prudent person would apply on behalf of other persons with whom a fiduciary relationship to make such investments exists and with consideration to achieving reasonable expectations of fair return without undue risk of loss.

- Allowable securities for credit unions include the following:

    a) shares in Central or co-operative associations;

    b) government or government guaranteed securities;

    c) municipal, school or hospital securities;

    d) securities evidencing deposits with Central or an eligible financial institution;

    e) securities for the purposes of taking or realizing security;

    f) prescribed securities; and

    g) any securities not specified above up to a maximum of 2% of assets (7% of assets for Central). "Basket Clause"

Prudent Investment Standards
Legislative Provisions (continued)

- Other than investments in affiliates or subsidiaries, credit unions or Central may not acquire more than 10% of any one corporation's common shares. The total value of all such common shares acquired by a credit union or Central must not exceed 10% of equity calculated on a consolidated basis. The basket clause cannot be used to exceed this limit.

- Credit unions or Central may invest in land for their own use provided the fair market value of the land invested in, plus the book value of land previously acquired does not exceed 5% of the book value of the credit union or Central's assets on a consolidated basis. Exceptions to the limits will be allowed with the approval of the Corporation for credit unions, or with the approval of the Minister for Central.

PROPOSED CREDIT UNION ACT

CORPORATE POWERS
- DIVERSIFICATION IN OTHER FINANCIAL SECTORS

Principles

Credit unions and Central are permitted under the draft legislation to acquire or set up subsidiaries, under provisions of the Act. It is proposed that credit unions and Central will be able to incorporate subsidiaries such as trust companies and securities dealers. These subsidiaries would be regulated under the appropriate legislation. Where there is a conflict between the provisions of the Credit Union Act and another Act, (e.g. Securities Act) governing a subsidiary financial institution, the other Act will prevail. Credit unions and Central will also be permitted to acquire shares in financial "affiliates". The self-dealing principles are designed to ensure that each financial institution within the corporate structure is self-sufficient and that the affiliated financial institutions do not rely on the credit union or Central for business or vice-versa. Self-dealing rules for credit unions are intended to be complementary to comparable rules that are or will be contained in other Statutes. Consequently, transactions between the parent institution and its financial subsidiaries and affiliates would be either prohibited or tightly controlled, except as outlined previously.

Legislative Provisions

- The Act authorizes a credit union's investment in subsidiaries or affiliates, subject to:
  - approval by special resolution in the case of a subsidiary; and
  - statutory limits of members' equity.
- An affiliate is defined as:
  - a corporation in which the credit union or Central holds more than 10% of the voting shares;
  - a corporation in which the credit union or Central holds less than 10% of the voting shares, but 50% or more of the voting shares of the corporation are held jointly by credit unions, Central, cooperative credit societies or by a combination of them; and
  - partnerships or joint ventures in which the credit union or Central has an interest.

Corporate Powers
- Diversification in Other Financial Sectors (continued)

- A credit union may only hold more than 10% of an affiliate's shares where the remaining shares are held by other credit unions, Central, co-operative credit societies, or eligible financial institutions. (Sec.98(3))

- Credit unions are generally prohibited from lending to or guaranteeing the obligations of financial subsidiaries or affiliates, or entering into any other transaction with the financial subsidiaries, with certain exceptions. Central is likewise restricted. (see "Conflicts of Interest and Self Dealing" section)

- The Minister is empowered to make regulations governing transactions between credit unions or Central and their subsidiaries or affiliates.

PROPOSED CREDIT UNION ACT

DEPOSIT GUARANTEE AND ROLE OF DEPOSIT GUARANTEE CORPORATION

Principles

The primary purpose of the Credit Union Deposit Guarantee Corporation will be to guarantee the repayment of deposits held with credit unions. The Corporation will provide risk management services for the credit union system as a whole not just those credit unions under their supervision. There would be a distinct division between the role of the Deposit Guarantee Corporation and the role of the Government regulator. The Corporation's role will be to ensuring that credit unions follow sound business practices, assist credit unions to avert financial difficulties and continuing their traditional role concerning supervision and administration. The Government on the other hand, would continue in its role of regulator and registrar of Credit Unions, conducting the annual examinations and carrying out the incorporation procedures for new credit unions as well as approving/registering credit unions by-laws.

Legislative Provisions

- The Credit Union Stabilization Corporation will be renamed the Credit Union Deposit Guarantee Corporation.

- The Credit Union Deposit Guarantee Corporation will become a Provincial Corporation as defined in the Financial Administration Act.

- The role of the Deposit Guarantee Corporation will be one of management, supervision or administration to prevent financial difficulties which might otherwise impair a credit union's ability to repay its liabilities.

- The board of directors of the Guarantee Corporation shall be appointed by the Lieutenant Governor in Council and shall consist of:

    - One individual, not being a director, officer or employee of a credit union that is under supervision or administration, who is nominated by the board of directors of Central.

    - Six other individuals (Sec.8(1))

- In order that the Corporation's purposes may be carried out, the Provincial Treasurer may, with the prior approval of the Lieutenant Governor in Council,

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Legislative Provisions (continued)

- make loans or advance to, or purchase shares or other securities issued by the Corporation or its subsidiaries.

- provide guarantee or indemnities in connection with loans made to, or other obligations of the Corporation or its subsidiaries. (Sec.111)

o The purposes of the Corporation are:

a) to guarantee the repayment of deposits held with credit unions,

b) to adopt measures designed to obviate or to minimize the risk and the size of claims,

c) to stabilize credit unions in financial difficulties,

d) to assist credit unions to avert or alleviate financial difficulties on their part by advising them on their standards of business practices, reviewing their business practices and such other means as the Corporation considers appropriate,

e) where so stipulated in orders, or so appointed, to supervise or administer the business and affairs of credit unions,

f) to purchase all or any of the assets and assume all or any of the liabilities, and, where so appointed, to act as the liquidator of credit unions that are in the process of liquidation or being dissolved,

g) to maintain a long-term unclaimed balances account for the holding of unclaimed deposits made with credit unions,

h) to provide the services of Special Loans Committees. (Sec.104)

Deposit Guarantee and Role of Deposit Guarantee Corporation

Legislative Provisions (continued)

- The Corporation will be empowered to levy an annual assessment, prescribed presently at 1/4 of 1%. They may, where it is deemed necessary, and on the approval of the Minister, levy one additional assessment per year, not exceeding 1/4 of 1%. (Sec.108 & 109)

- There will be a provision for reduced assessments for credit unions who meet prescribed conditions. (Sec.110)

- A limit may be established by the Lieutenant Governor in Council on the maximum amount of the guarantee on individual deposits, however, this would occur no earlier than November 1, 1994, and may only be implemented upon one year's notice to the credit union system. The limit on the guarantee would not apply to deposits made before the guarantee limit was established (i.e. the full guarantee would apply until the maturity date of the deposit) (Sec.212(b))

PROPOSED CREDIT UNION ACT

MEMBERSHIP IN CENTRAL

Principles

In order for Central to maintain a strong position in the system, fulfil their role as the liquidity agent for the system and participate in the national scene through the CCCS and the CPA, the full support of all credit unions is needed.

Legislative Provisions

- Membership in Central will be required under the Act, subject to prescribed exceptions. A credit union or class of credit unions, could, should the benefits be demonstrated adequately, be exempted from the requirement of membership in Central. (Sec.118(a))

- Regulations will provide for co-operative associations and certain prescribed corporations as having membership in Central. (See 118(b))

- Each credit union that is a member of Central, other than a prescribed credit union, will be required at all times to hold common shares of Central in an amount not less than that prescribed by regulations, and this is, for the present, set at 2% of the credit unions assets. (Sec.130(3))

- In order that Central may maintain a strong liquidity role for the system, credit unions, other than exempted credit unions will be required to maintain their liquidity investments with Central in the form of 2% in shares as noted above and a minimum of 7% in deposits with Central. In addition, a maximum of 1% in cash or current account is required, for a total liquidity of 10%. (Sec.99(2))

PROPOSED CREDIT UNION ACT

EQUITY/CAPITAL REQUIREMENTS

Principles

Credit unions will be required to accumulate and maintain adequate equity as a safeguard against insolvency. It is generally recognized that adequate capital must be maintained to cushion the institution against downturns in the economy.

Legislative Provisions

- A credit union shall maintain an aggregate of member's equity in an amount that is not less than 5% of its assets. It must achieve this minimum level within 10 years. (Sec.138, 220)

  (Note: Equity is defined to include common shares, preferred shares, retained earnings and reserves)

- The common shares will have a par value of $1.00 each. A person is not qualified to be a member unless he holds at least 25 common shares. The by-laws may state a lower number in the case of a minor or a senior. (Sec.54, 136)

- It is not required nor intended that a credit union will issue a certificate in respect of common shares.

- Subject to by-laws, a credit union may redeem common shares subject to the following restrictions. A credit union shall not redeem common shares if:

  (a) the credit union were to be made insolvent,

  (b) the members equity would fall to less than 5% of assets or,

  (c) the aggregate of common shares issued and outstanding would be less than 90% of the amount issued and outstanding at the end of the previous fiscal year. (Sec.140)

Legislative Provisions (continued)

- Exceptions to rules (b) and (c) will provide for redemptions in the case of the death of a member or where a member is transferring to another credit union in Alberta.

- Where the credit union has a deficit, there will be a requirement to allocate the deficit upon redemption of a share.

PROPOSED CREDIT UNION ACT

SUPERVISION AND ADMINISTRATION

Principles

Where the Credit Union Deposit Guarantee Corporation considers that a credit union is in need of assistance, the Guarantee Corporation may make an order placing that credit union under supervision appointing themselves or some other person as the supervisor.

The Guarantee Corporation under very specific circumstances may place a credit union under administration, but only with the prior approval of the Minister.

Legislative Provisions - Supervision - Credit Unions

o A credit union is deemed to be in need of assistance where:

a) The business or affairs of the credit union or one of its subsidiaries is being managed or is being conducted in an unsound manner. (Sec.168(a)).

b) The credit union is in need of assistance if it or one of its subsidiaries is or is imminently about to become insolvent. (Sec.168(b)).

c) The credit union has failed to meet the minimum statutory liquidity requirements for a period of 6 consecutive calendar months. (Sec.168(c)).

d) The credit union has been in repeated contravention of the provisions of the Credit Union Act with respect to the acquisition of land, the acquisition or disposal of securities to or from a subsidiary, has borrowed money from other than Central except on the approval of the Stabilization Corporation. (Sec.155, 93 & 96).

e) The credit union does not meet the minimum members' equity requirements as set forth by legislation. (Sec.168(e) & 138)

Supervision and Administration

Legislative Provisions - Supervision - Credit Unions (continued)

f) The credit union fails to comply with special loans, lending limits or loan mix requirements. (Sec.159 & 161)

g) The credit union has received financial assistance from the Corporation. (Sec.168(d))

h) A new credit union that has obtained approval to commence business may be subject to supervision from 6 to 12 months during their initial start up period. (Sec.169(2)

i) Where a credit union's borrowings exceed 20% of its assets, the Corporation may place the credit union under supervision. (Sec.154)

Supervision - Credit Union Central

o The Minister may place Credit Union Central under supervision where he deems that:

a) The business or affairs of Central or its subsidiary are being mismanaged or being conducted in an unsound manner. (Sec.133(1)(d))

b) Central or one of its subsidiaries is or is about to become insolvent. (133(1)(b))

Administration - Credit Unions

o When the Corporation considers that a credit union under supervision continues to be in need of assistance, it may place that credit union under administration if:

a) The credit union has generally failed to co-operate with the supervisor. (Sec.172(1)(a))

b) The credit union or one of its subsidiaries has been in repeated or continued contravention of the Credit Union Act or the Regulations. (Sec.172(1)(b))

c) The problems that created the need for supervision have not been resolved within a reasonable time and further remedial action is necessary. (Sec.172(1)(c))

d) Supervision is not adequate to ensure that the Corporation will not be required to make payments under its deposit guarantee to members of the credit union. (172(1)(d))

Supervision and Administration

Administration - Credit Union Central

- Credit Union Central may be placed under administration where Central is under supervision and the Lieutenant Governor in Council considers:

  a) Central has generally failed to co-operate with the supervisor. (Sec.134(1))(a))

  b) Central or a subsidiary of Central has been in repeated or continued contravention of the Credit Union Act or the Regulations. (Sec.134(1)(b))

  c) The problems that created the need for supervision have not been resolved within a reasonable time and further remedial action is necessary. (Sec.134(1)(c)).

PROPOSED CREDIT UNION ACT

BORROWINGS

Principles

Credit unions will be permitted to borrow from Central by way of a line of credit to meet short-term liquidity needs. It is not intended that credit unions borrow to fund lending activities and they should rely on deposits for this purpose.

Legislative Provisions

- A credit union will be permitted to borrow only upon a resolution of its board of directors passed within the previous 13 months. (Sec.153).

- The Corporation will be empowered to place a credit union under supervision or administration if its borrowings exceed 20% of assets. When a credit union reaches a 15% level, a credit watch will be instituted by the Corporation upon notification from Central.

- A credit union will not be permitted to borrow for more than a 24 month term except for the acquisition of:

    a) land;
    b) buildings;
    c) equipment; and
    d) leasehold improvements,

  necessary to carry out its business. However, a credit union will be permitted to borrow for more than 24 months to fund a lending program, but only with the approval of the Corporation. (Sec.155(3)).

PROPOSED CREDIT UNION ACT

LOANS

Principles

Prudent lending practices and diversification of loan portfolio by type, borrower or where applicable, by geographic location is required by legislation and would spread the risk more equitably, providing a strong asset base for credit unions. Lending rules will be set out in the regulations.

Legislative Provisions

- Loans will be made in accordance with the Act and regulations which will specify the maximum size of any loans which a credit union will be allowed to make to any connected person. (Sec.160(1)).

- A person is "connected" to another if any two of the following 3 conditions exists;

  (a) the source of repayment of the loans would be wholly or substantially dependent on a common source of income;

  (b) the loans would be, in substance, a single loan or substantially serve the same purpose;

  (c) the loans would be dependent on the same security. (Sec.157(2)).

- The Corporation will monitor the credit union's loan mix (ie. farm, commercial, consumer, mortgage loans) on a regular basis and will be empowered to require a credit union to alter its loan mix where it is considered to have reached an unacceptable level of risk. (Sec. 159).

- The Corporation shall appoint Special Loans Committees for credit unions. They will establish appropriate loan limits for each credit union. These limits will not be in excess of maximum loan limits set by regulations unless approved by the Minister. The regulations may provide for representation by Central on the Special Loans Committee. (Sec. 161).

- Loans to directors will not be treated differently than loans to any other member, and will not be made under any terms that are otherwise preferential. As a transitional provision, existing loans to directors continue under terms of the contract where special terms are stipulated.(Sec.163).

APPEALS

Principles

An appeal mechanism is instituted whereby certain decisions of the Minister may be appealed to an independent administrative body, appointed by the Minister, to hear the issues of the matter at hand. The objective of the procedure is to attempt to settle any grievous issues without incurring the expenses of court proceedings. If a party to an appeal feels aggrieved by the decision of the appeal panel, court action may be commenced.

Legislative Provisions

- The following decisions of the regulator may be appealed and include:

  a) the refusal of an application for incorporation. However, the refusal of incorporation on the basis of the business plan not being approved by the Corporation, may not be appealed, (Sec.197(1)(a))

  b) the refusal of an application to allow commencement of business, or the revocation of the certificate of incorporation, where the provisions with respect to the commencement of business have not been met within a two year time period. For example, if the required number of members have not been attained within a two year time period, the Minister may move to revoke incorporation, (Sec.197(1)(b))

  c) the placing of a credit union or Central under supervision, (Sec.197 (1)(c))

  d) notification by the Minister that he intends to dissolve a credit union that is no longer carrying on business, or whose membership has fallen below those required minimums to commence business. (Sec.197(1)(d))

  e) a cease and desist order.

  f) an order to divest of an investment in a subsidiary.

APPEALS

Legislative Provisions (continued)

g) denial of a request to change a bond of association.

h) denial of a request to be released from supervision,

- When a notice of objection is served on the Minister, the Minister will appoint a three person panel to hear the appeal. (Sec.198(2,3))

- The panel may confirm, vary, or reverse the decision. (Sec.198(6))

- The decision of the review board is binding on the Minister and the Corporation. (Sec.198(a))

- A party to a notice of objection may apply to the Minister to proceed directly to the court with the action, thereby, dispensing with the administrative process.

- Any party affected by the decision may appeal to the court. (Sec.200)

- Notice of objection or appeal to the court does not operate to act as a stay of the decision or action. (Sec.201(1))

PROPOSED CREDIT UNION ACT

CEASE AND DESIST ORDERS

Principles

In keeping with like provisions being introduced with respect to financial institutions at federal and other provincial levels, the regulator is being empowered to step in and correct certain actions or activities, which are otherwise illegal or detrimental to the well being of the credit union.

Legislative Provisions

- Where a credit union, Central or its subsidiary is doing something or is failing to do something that:

  a) is in contravention of the Act or regulations,

  b) is inconsistent with the purposes of a credit union or Central, as the case may be,

  c) constitutes a practise that might adversely affect the interests of depositors or creditors,

  then the Minister may order the body corporate to cease from doing or to do that thing, necessary to remedy the situation. (Sec.203)

- The Minister may apply for an injunction to restrain Central, credit union or its subsidiary, or any director, or officer from contravening any provision of the Act, regulations or by-laws. (Sec.203.1)

PROPOSED CREDIT UNION ACT

EXTRA PROVINCIAL INSTITUTIONS

Principles

The objective is to allow extra provincial credit unions to perform limited activities in Alberta resulting from their normal operations carried out within their own jurisidiction. It is not intended to provide a vehicle by which extra provincial credit unions can enter Alberta and compete with Alberta Credit Unions in the core business of deposit taking and loans. This is consistent with most other provincial legislation.

Legislative Provisions

- In dealing with extra provincial credit unions, no form of incorporation or registration will be required. Rather, they will be restricted to the following acitivities:

    a) registering security in Alberta

    b) realizing on such security, and

    c) taking steps for the purposes of collecting or enforcing a liability that is owing to it. (Sec.210)

PROPOSED CREDIT UNION ACT

TREATMENT OF UNCLAIMED BALANCES

Principles

It is the intention of the new Act that unclaimed balances will be handled by credit unions in basically the same manner as unclaimed balances are dealt with by chartered banks.

Legislative Provisions

- If, in a twelve month period, a customer or member of a credit union has not transacted any business through any of his accounts held with the credit union nor provided a written acknowledgement to the credit union of the balance of those accounts and where the balance of all that customer's accounts exceed $100 the credit union will be required to make reasonable attempts to locate him. (Sec.145(1)).

- If the credit union cannot locate the customer or member within 2 years of the date of the last transaction of any business through his accounts or written acknowledgement of the balance they will transfer all of the balances standing to his credit in all of his accounts into an account designated as an unclaimed balances account. The credit union will be required to maintain records in relation to each account transferred. (Sec.145(2)).

- At approximately the second and fifth anniversary of the transfer into the unclaimed balance account the credit union will be required to make reasonable endeavours to locate the customer or member. The credit union will be permitted to charge a service charge for conducting these searches, however, may not impose any other charge for its activities with respect to unclaimed balances. (Sec.145(5)).

- The credit union will be required to pay interest on the balances transferred, but will not have to pay the interest until a claim is paid out of unclaimed balances account or until it transfers the monies to the Corporation. (Sec.145(8)).

- At fiscal year end, credit unions will be required to transfer to the Corporation all unclaimed balance accounts that have been held for at least 10 years. (Sec.145(11)).

- Within 3 months of receiving a balance of an account from a credit union the Corporation shall publish in a newspaper circulated in the district where the

Treatment of Unclaimed Balances

Legislative Provisions(cont'd)

depositor's last known address is situated, the name of that person, the type of account, the balance transferred in respect of him and the name of the branch location of the credit union. The Corporation may not impose a charge for its service under this section except that it may charge the cost of the publication. (Sec.148(3)).

- The Corporation shall pay interest on these funds from the date of receipt. (Sec.148(6)).

- 20 years after a balance was transferrred to the Corportion the whole of the amount with interest will be transferred by the Corporation to the Government of Alberta's General Revenue Fund. (Sec.148(7)).

- Where the combined balances standing at the customer's or member's credit was originally less than $100 the credit union may transfer all such balances to the income of the credit union. Suitable records will be maintained by the credit union and if the balances transferred to income are not claimed within 5 years after the last transaction or acknowledgement the credit union may retain the money and not be sued for any claims for that money after the expiration of that period. (Sec.146).

PROPOSED CREDIT UNION ACT

TRANSITIONAL PROVISIONS

Principles

In order to facilitate the introduction of the new Act, a number of transitional provisions will be enacted.

Legislative Provisions

- The Act will come into force November 1st, 1988.
- A credit union shall before November 1st, 1990, provide articles of continuance and new by-laws executed by the credit union. (Sec.217(1))
- The memorandum of association and supplemental by-laws of an existing credit union, as they were immediately before November 1st, 1988, shall be deemed to be its articles of continuance and by-laws, until the new documents are registered. (Sec.271(2))
- Any provision of the existing memorandum of association or supplemental by-law, that is inconsistent with the new Act, are invalid to the extent of the inconsistency. (Sec.217(3))
- If an existing credit union fails to comply with the above, they may be put under supervision or be dissolved. (Sec.217(6))
- An existing member has until November 1, 1990, to acquire the required number of common shares, at which point he shall cease to be a member, if the required number of shares is not held by him. (Sec.218(1))
- Unless the Corporation otherwise approves, a credit union and its subsidiaries shall before December 31, 1990, dispose of land which is in excess of either 5% of the book value of the credit union's assets, or what the credit union requires, in order to carry on its business. (Sec.219(1))
- Where the credit union holds securities, which are not otherwise approved by the legislation, they may continue to hold them if the securities have a specified maturity date to that date, but may not renew them and if the securities have no maturity date to no later than November 1, 1990. (Sec.219(3))

Transitional Provisions

Legislative Provisions (Continued)

- Where a body corporate acquires securities after May 13th, 1987, but before November 1st, 1988, that do not comply with the provisions of the Act, it shall divest itself of those securities before January 1st, 1989, unless it has the Minister's approval to retain the shares. (Sec.219(4))

- A credit union shall before January 1st, 1989, divest itself of any subsidiary formed or acquired after May 13th, 1987, and before November 1st, 1988, unless it has the approval of the Minister to retain it. (Sec.219(5))

- Where a credit union or Central has acquired corporate shares that exceed the 10% limit, in any body corporate, or the 10% of equity limit of the credit union or Central, in contravention of legislation, it shall divest itself by January 1st, 1989 of any proportion of common shares acquired by it, on or after May 13th, 1987, but before November 1st, 1988, unless it has the Minister's approval to retain the shares. (Sec.219(6)).

- Reserve funds held as deposits, debentures, loan stocks or other investments under section 45 of the former Act, before May 13th, 1987, shall be deemed to be deposited with Central for liquidity purposes, until their initial maturity date, if they are continually held by the credit union until that date. (Sec.219(7))

- An existing credit union shall have an equity program approved by the Corporation and shall comply with the program before November 1st, 1997. (Sec.220(1))

- An existing credit union's guarantee reserve fund, shall be converted to an allowance for doubtful loans, as needed before November 1st, 1988. (Sec.221(1))

- Any excess in the reserve fund, not required for doubtful loans, shall be converted to common shares and retained earnings. (Sec.221(2))

- Existing equity accounts shall be converted to common shares. (Sec.222(2))

Transitional Provisions

Legislative Provisions (Continued)

- Former membership shares shall be converted to common shares, to the extent needed for the member, to have sufficient common shares for the purposes of this Act. (Sec.223(2))

- Former membership shares that are not required to be converted to common shares, shall be re-designated as participatory savings accounts, as deposits, or paid to the member. Where the member so directs the former membership shares may be converted to common shares. (Sec.223(3))

- Existing credit unions under supervision or administration continue to retain their status. (Sec.224(1))

- Where an existing credit union was being dissolved or liquidated, under the former Act, before November 1st, 1988, that Act continues to apply for the liquidation or dissolution. (Sec.224(2))

- The Credit Union Deficit Financing Agreement continues in force. (Sec.225(2))

- All the assets and liabilities of the fund are transferred to the Corporation and the Fund is dissolved. (Sec.226(1))

- Directors of Central and credit unions are permitted to continue to serve as directors until the expiration of their terms, unless they are disqualified by being an undischarged bankrupt, being convicted of a related and federal offence, or if they have a loan from a credit union outstanding in excess of 60 days. (Sec.226(2))

- Favourable loans to non-employees (e.g. Directors) are due before November 1st, 1989, except where the contract has a specified term or is repayable on a specified date. The provisions of that contract shall continue but may not be renewed. (Sec.226(3))

PROPOSED CREDIT UNION ACT

MISCELLANEOUS

Legislative Provisions

- The Credit Union Federation of Alberta Limited is continued as a corporation under the name Credit Union Central Limited. (Sec.117)

- Credit unions, Central and the Corporation have the rights, powers and privileges of an individual, subject to the Act and the regulations. (Sec.41, 100, 120)